

STATE OF DELAWARE
PUBLIC EMPLOYMENT RELATION BOARD

DELAWARE PUBLIC EMPLOYEES COUNCIL 81,

AFSCME, AFL-CIO,

D.S. No. 96-07-186

Petitioner,

and

APPOQUINIMINK SCHOOL DISTRICT,

Respondent

APPEARANCES

Vance E. Sulsky, Esquire, for the Petitioner

David H. Williams, Esquire, for the Respondent

BACKGROUND

The Appoquinimink School District (hereinafter "District" or "Respondent") is a "public employer" within the meaning of 14 Del.C. §4002 (n) of the Public School Employment Relations Act (hereinafter "PSERA" or "Act"). Delaware Public Employees Council 81, AFSCME (hereinafter "Union" or "Petitioner") is the exclusive bargaining representative of the custodial and maintenance employees employed by the District within the meaning of 14 Del.C. §4002 (i).

FACTS

The Petitioner and the Respondent were parties to a collective bargaining agreement which expired on June 30, 1996. On March 29, 1996, Phillip S. Williams,

Sr., the Petitioner's authorized representative, wrote to Tony Marchio, the District Superintendent, requesting to open collective bargaining negotiations over the terms of a successor agreement.

On April 15, 1996, Todd Conn, the Respondent's Facilities Management Advisor, drafted the following reply to Mr. Williams' letter of March 29, 1996:

I received a copy of the letter dated March 29, 1996 to Tony Marchio, Superintendent of the Appoquinimink School District, regarding contract negotiations for the Custodial contract. I have scheduled a meeting of the school districts negotiation team on April 15, 1996. We will be contacting your office after that meeting to set up a meeting with your people. If you have any questions please contact my office.

By letter dated May 9, 1996, Mr. Conn further advised Mr. Williams of the following:

As per my last letter regarding collective bargaining for contract negotiations, our negotiation team has met twice now and feels we need to meet at least two more times before we start negotiations. Our goal is to start negotiations by the end of this month. I will keep you informed.

On June 18, 1996, Mr. Conn sent to the Petitioner the following letter:

As per my last letter regarding collective bargaining for contract negotiations, our negotiation team would like to invite your negotiation team to our first joint meeting on June 24, 1996, at 4:00 P.M. at the district office. Our first meeting will be to introduce the teams and set the ground rules for the negotiations. Please contact my office as soon as possible to confirm the date.

On June 26, 1996, Mr. Conn sent Mr. Williams the following letter:

As per my last letter attempting to set a meeting date and time with the negotiating team representing the custodial group, our team is available to meet on Mondays of each week. Please note our feelings are that all negotiations should be done after regular hours. We understand there is some concern with your team on this issue. Please, if that is the case, contact my office with any suggestions that will not cost the district for overtime, comp. time, people covering positions, or interfere with the operations of the school district. As always we are open minded to any input you may have to help resolve any extra cost that may be accrued by the school district in negotiations. Please contact my office at your convenience to attempt to set up a meeting.

Another letter from Mr. Conn to Mr. Williams dated July 3, 1996, provides:

As stated in my June 18 and June 26 letters, we are ready to meet with the negotiating team representing the custodial group, our team is available to meet on Mondays of each week. As stated before our feelings are that all negotiations should be done after regular hours. We understand there is some concern with your team on this issue. Please, if that is the case, contact my office with any suggestions that will not cost the District for overtime, comp. time, people covering positions, or interfere with the operations of the school district. As always we are open minded to any input you may have to help resolve any extra cost that may be accrued by the school district in negotiations. Please contact my office at your convenience to attempt to set up a meeting.

Thereafter, the following letter dated July 12, 1996, was sent by Mr. Conn to Mr.

Williams:

As stated in my June 18, June 26, and July 3 letters, we are ready to meet with the negotiating team representing the custodial group. Our team is available to meet Mondays each week. We are puzzled at the lack of response from your organization in regards to setting a meeting date. We were under the impression your group would like to start negotiations as soon as possible. As we stated before our feelings are that all negotiations should be done after regular hours. We understand there is some concern with your team on this issue. Please, if that is the case, contact my office with any suggestions that will not cost the district for over time, comp time, people covering positions, or interfere with the operations of the school district. As always we are open minded to any input you may have to help resolve any extra cost that may be accrued by the school district in negotiations. Please contact my office at your convenience to attempt to set up a meeting.

On July 18, 1996, the Union filed a Petition For A Declaratory Statement with the Public Employment Relations Board (hereinafter "Board" or "PERB"). The Petition alleges that the District's position is, in essence, "a refusal to bargain over mandatory subjects of bargaining pending resolution of a non-mandatory subject of bargaining" and requesting the PERB to find that the "refusal by the Appoquinimink School District to bargain during the normal work day constitutes an unfair labor practice." The Petitioner asserts that attempts to resolve the controversy have been unsuccessful and requests assistance from the Board in resolving the dispute.

Following the filing of the Petition on July 18th, Mr. Conn wrote the following letter to Mr. Williams dated July 23, 1996:

I received a copy of your petition to the Public Employment Relations Board. As you are aware I have written your office on June 18, June 26, July 3, and July 12 in an effort to start contract negotiations. I would like to point out I have made several attempts in writing in the letters discussed above to meet with you. I would also like to point out that your office has made no attempts to contact my office. As stated before we are ready to meet with the negotiating team representing the custodial group. Our team is available to meet on Mondays of each week. We are puzzled at the lack of response from your organization in regards to setting a meeting date. We were under the impression your group would like to start negotiations as soon as possible. As we stated before our feelings are that all negotiations should be done after regular hours. We understand there is some concern with your team concerning this issue. Please, if that is the case, contact my office with any suggestions that will not cost the district for overtime, comp. time, people covering positions, or interfere with the operations of the school district. As always we are open minded to any input you may have to help resolve any extra cost that may be accrued by the school district in negotiations. Please contact my office at your convenience to attempt to set up a meeting.

On August 5, 1996, the District filed its Answer to the Petition requesting the PERB to issue a Declaratory Statement finding that the Union's insistence on negotiating during the normal work day constitutes an unfair labor practice.

In order to expedite a decision, the parties waived the opportunity to present supporting argument and, except for the Union's uncontested request to have Article 6.1.11 of the expired collective bargaining agreement included in the record, mutually request that the decision result from the averments set forth in the pleadings.¹

OPINION

A Petition for Declaratory Statement filed pursuant to 14 DeL.C. §4006 (h) (4) permits the expeditious processing of questions relating to a potential unfair labor practice and to answer questions relating to whether a matter in dispute is within the scope of collective bargaining. It is, in this regard, different from the filing of an

¹Article 6.1.11 provides, in relevant part: "Up to four (4) employees will be released from work to participate in contract negotiations."

Unfair Labor Practice Charge pursuant to 14 Del.C. §4007, of the Act, the result of which can be a determination that a violation of Article 4007, of the Act, has occurred and a remedial order issued.

Except when necessary to resolve a pending unfair labor practice charge, the Board has declined to interpret contract language. Brandywine Affiliate, NCCEA/DSEA/NEA v Bd. of Ed. ULP No. 85-06-005 (1985), PERB Dec. 131.

This matter provides no reason to consider expanding the Board's policy concerning its authority to review or interpret contract language. Considered within the context of the issue raised by the Petitioner, Article 6.1.11 has no bearing upon the resolution of the issue presented. Article 6.1.11 assures the release of up to four (4) employees to participate in collective bargaining negotiations. Article 6.1.11 does not require that collective bargaining negotiations be scheduled only during the normal day-shift hours. To so conclude would extend the meaning of the cited provision beyond that intended by the parties, as evidenced by the contract language.

The pleadings establish that the District has: (1) communicated to the Union its feeling "that all negotiations should occur after regular hours;" (2) recognized that its position may be the cause of concern to the Union's negotiating team; and (3), solicited from the Union suggestions for resolving the stalemate without increasing the cost of or reducing custodial services. It is unclear to what extent, if any, the parties have attempted to resolve their differences concerning the scheduling of negotiation meetings. The Petitioner maintains that "attempts to resolve the controversy have been unsuccessful" (Petition @ ¶. 3). The Respondent, on the other hand, maintains that no response to its letters was forthcoming from the Union (Conn Letter dated July 23, 1996).

As evidenced by the order it seeks, the Union, perceives the issue more broadly than whether the position and specific conduct of this Respondent concerning the

scheduling of the collective bargaining sessions constitutes a potential unfair labor practice. The order requested by the Union is "that the Board issue a Declaratory Statement that the refusal of the Appoquinimink School District to bargain during the normal work day constitutes an unfair labor practice." The broader issue concerning an employer's willingness to collectively bargain only at times other than during the regularly scheduled work day has arisen on prior occasions. Until this instance, however, the parties involved have successfully resolved their differences.

The following comments are intended to reflect not only the underlying rationale for the Declaratory Statement requested by these parties but also serve as a guide for others who may be confronted with a similar situation.

The Delaware Public School Employment Relations Act is, to a large extent, similar to both the Pennsylvania Public Employment Relations Act (hereinafter "PPERA") and the National Labor Relations Act (hereinafter "NLRA") which is the federal statute governing private sector collective bargaining. The PPERA, at Section 701, and the NLRA, at Section 8(d), require the employer and the employee representative to meet at reasonable times and places in order to bargain in good-faith.

Unlike the Pennsylvania and the Federal statutes, the PSERA contains no reference to the time and place at which the required collective bargaining is to occur. 14 Del.C. §1402 (e) (1984). Section 1402(e) of the PSERA requires only that the parties bargain in good faith. Thus, the standard for determining whether or not an employer's willingness to collectively bargain only at times other than during the regularly scheduled work day violates the Act is one of good-faith. Otherwise stated, the question is whether the employer's position is reasonable.

The motivation for and/or the impact of an Employer's willingness to collectively bargain only at times other than during the regularly scheduled work

day are the critical considerations rather than the decision, itself. Where present, union animus, an unreasonable or discriminatory impact upon the Union's bargaining team to its disadvantage and/or the onerous impact upon the integrity of the bargaining process are the gravamen of such a decision. For this reason, individual incidents are to be resolved based upon a consideration of the facts unique to each situation.

DECISION

Consistent with the foregoing discussion, in the absence of bad faith in the form union animus, disparate impact upon the Union's bargaining team to its disadvantage or conduct inherently detrimental to the integrity of the bargaining process, an Employer's willingness to participate in collective bargaining negotiations only during times other than the regularly scheduled work day does not violate the Act.

Applied to the current dispute, there is no basis for concluding that the District's position is either motivated by union animus, impacts the members of the Union's bargaining team differently from those of the District's bargaining team to the disadvantage of the former or is inherently detrimental to the integrity of the collective bargaining process.

Accordingly the District's position does not constitute a basis for a potential unfair labor practice charge.

IT IS SO ORDERED.

Dated: August 21, 1996

/s/Charles D. Long, Jr.
CHARLES D. LONG, JR.
Executive Director
Del. Public Employment Relations Bd.